

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA, In and for the County of Cochise**

**JUDGE: HONORABLE JAMES L CONLOGUE,**  
**DIVISION: FIVE**  
**COURT REPORTER: AARON SCHLESINGER**  
**INTERPRETER: None**

**AMY J. HUNLEY, Clerk of the Superior Court**  
 by: MICHELLE GARCIA (1/25/2019 4:39:11 PM), Deputy Clerk

**HEARING DATE: 01/24/2019**

<p><b>STATE OF ARIZONA</b></p> <p style="text-align: right;">Plaintiff,</p> <p><b>VS</b></p> <p><b>JAMES EDWARD EARLEY, II,</b></p> <p style="text-align: right;">Defendant.</p>	<p><b>CASE NO: S0200CR201800079</b></p> <p><b>MINUTE ENTRY: JURY TRIAL DAY THREE</b></p> <p><b>HEARING START TIME: 9:02 AM</b>  <b>HEARING END TIME: 3:34 P.M.</b></p>
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State Represented by Terisha Driggs, Deputy County Attorney  
 Defendant present in person and by Rafael Malanga, Esquire  
 Defendant in custody: No

Prior to the commencement of proceedings, State's exhibits 17, 18, 19, 20, 21, and 22 were returned to the clerk by Case Officer Detective Marcus Anderson, and State's exhibit 3A was marked for identification.

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At 9:02 a.m. proceedings resumed for day three of trial before a jury with the presence of the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson. The jury is present and seated in the box.

Witness Detective MARCUS ANDERSON, previously sworn and remaining under oath, was further direct examined, cross examined, redirect examined and excused from the stand. During the witness' testimony, State's exhibit 3A and Defendant's exhibits I1 and I2 were marked for identification and admitted into evidence, and Defendant's exhibit J was marked for identification.

Ms. Driggs advised that the State RESTED but reserved the right to call rebuttal witnesses.

At 9:22 a.m. the Court renewed the admonition and called a recess.

THE RECORD MAY SHOW the jury exited the courtroom and the door was closed. Remaining in the courtroom were the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson.

Ms. Driggs filed in open court a Motion *in Limine* to Preclude Evidence and presented argument in support of her motion.

Mr. Malanga made an oral Rule 20 Motion for Directed Verdict and presented argument in support of his motion.

Ms. Driggs presented argument in response.

Mr. Malanga presented argument in reply.

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Ms. Driggs further presented argument.

The Court does FIND that there is substantial evidence to allow the case to be presented to the jury as to both counts, therefore,

**IT IS ORDERED** denying Defendant's oral Rule 20 Motion for Directed Verdict.

Mr. Malanga presented argument in response to Ms. Driggs' Motion *in Limine* to Preclude Evidence. The Court inquired of and heard from Mr. Malanga.

For the reasons stated on the record,

**IT IS ORDERED DENYING** State's Motion *in Limine* to Preclude Evidence.

Discussion was held clarifying the Court's ruling.

At 9:50 a.m. the Court called a brief recess for those remaining in the courtroom.

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At 10:02 a.m. proceedings resumed with the presence of the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson. The jury is present and seated in the box.

Mr. Malanga called as a witness JOSH SHUCK, who was duly sworn, direct examined, cross examined, redirect examined, further questioned by Ms. Driggs, and excused from further testimony.

Mr. Malanga called as a witness GEORGE MILLS, who was duly sworn, direct examined, cross examined, redirect examined and excused from further testimony.

Mr. Malanga called as a witness the Defendant JAMES EDWARD EARLEY, II, who was duly sworn and direct examined.

At the request of Ms. Driggs, counsel approached the bench.

Witness Defendant JAMES EDWARD EARLEY, II was further direct examined.

At 11:35 a.m. the Court renewed the admonition and called a brief recess.

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During the recess, a question was received from the jury which was marked for identification as Court's exhibit 1.

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At 11:45 a.m. proceedings resumed with the presence of the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson. The jury is present and seated in the box.

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At the request of Ms. Driggs, counsel approached the bench.

Witness Defendant JAMES EDWARD EARLEY, II was further direct examined. During the witness' testimony, Defendant's exhibits A1-A12 were admitted into evidence and published to the jury, and Court's exhibits 2, 3 and 4 were marked for identification.

At 11:54 a.m. the Court renewed the admonition and called the lunch recess with instructions to return at 1:30 p.m.

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At 1:39 p.m. proceedings resumed with the presence of the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson. The jury is present and seated in the box.

Witness Defendant JAMES EDWARD EARLEY II, resumed the stand and was cross examined.

At the request of Mr. Malanga, counsel approached the bench.

Witness Defendant JAMES EDWARD EARLEY II was further cross examined.

At the request of Ms. Driggs, counsel approached the bench.

Witness Defendant JAMES EDWARD EARLEY II was further cross examined and excused from the stand. During the witness' testimony, Court's exhibit 5 was marked for identification.

Mr. Malanga announced that the Defense RESTED.

Ms. Driggs recalled as a rebuttal witness Case Officer Detective MARCUS ANDERSON who was direct examined.

At 2:35 p.m. at the request of Mr. Malanga, the Court renewed the admonition and called a brief recess.

THE RECORD MAY SHOW the jury has exited the courtroom and the door was closed. Remaining in the courtroom were the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson.

Mr. Malanga made an oral Motion for Mistrial and presented argument in support of his motion.

Ms. Driggs presented argument in response.

Mr. Malanga presented argument in reply.

For the reasons stated on the record,

**IT IS ORDERED DENYING** Defendant's Motion for Mistrial.

Discussion was held with regard to pending questioning.

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At 2:47 the Court called a recess for those remaining in the courtroom.

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At 2:54 p.m. proceedings resumed with the presence of the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson. The jury was present and seated in the box.

Witness Case Officer Detective MARCUS ANDERSON was excused from the stand.

The Court advised that two rebuttal witnesses remained and would be called to testify tomorrow morning.

At 2:56 p.m., the Court renewed the admonition and excused the jury for the day with instructions to return tomorrow morning at 9:00 a.m.

THE RECORD MAY SHOW the jury had exited the courtroom and the door was closed. Remaining in the courtroom were the Defendant, Mr. Malanga, Ms. Driggs and Case Officer Detective Anderson.

Ms. Driggs requested time to review the jury instructions.

At 2:57 p.m. the Court called a recess.

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At 3:18 p.m. proceedings resumed with the presence of the Defendant, Mr. Malanga, and Ms. Driggs. The jury had been excused for the day.

Discussion was held with regard to jury instructions.

Mr. Malanga renewed his oral Rule 20 Motion for Directed Verdict.

**IT IS ORDERED** denying Defendant's renewed oral Rule 20 Motion for Directed Verdict.

At 3:34 p.m. proceedings concluded for the day.

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Following the conclusion of proceedings, State's exhibits 17, 18, 19, 20, 21 and 22 were returned to Case Officer Anderson and a receipt was executed.

xc: e-mailed (e) by: mmg date: 1/25/19

<input checked="" type="checkbox"/> County Attorney (e)	<input checked="" type="checkbox"/> R. Malanga, Esq. (e)	<input type="checkbox"/> Legal Defender	<input type="checkbox"/> CCSO/Jail	<input type="checkbox"/> CCSO/Warrants
<input type="checkbox"/> Court Administration	<input checked="" type="checkbox"/> DIV 5 JAA (e)	<input type="checkbox"/> APO	<input type="checkbox"/> Jury	<input type="checkbox"/> Donna Harris, Deputy Clerk